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06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08 RICHARD A. KIRKHAM,) CASE NO. C05-1274-RSM
09 Plaintiff,)
10 v.)
11 J.I. BELFORD,) REPORT AND RECOMMENDATION
12 Defendant.)
13 _____)

14 INTRODUCTION AND SUMMARY CONCLUSION

15 This is a *pro se* civil rights action under 42 U.S.C. § 1983. Plaintiff alleges in his
16 complaint that J.I. Belford, a detective with the King County Sheriff's Office, violated his
17 Fourth Amendment rights when Detective Belford seized personal papers and letters during a
18 search of plaintiff's jail cell which were outside the scope of the warrant pursuant to which the
19 search was conducted. Defendant Belford now moves for summary judgment. Plaintiff,
20 despite having been advised of the summary judgment requirements pursuant to *Rand v.*
21 *Rowland*, 154 F.3d 952 (9th Cir. 1998), has filed no response to defendant's motion.
22 Defendant's motion for summary judgment is now ripe for review. This Court, having

01 reviewed defendant's motion, and the balance of the record, concludes that defendant's motion
02 for summary judgment should be granted.

03 FACTUAL BACKGROUND

04 Plaintiff Richard Kirkham filed the instant civil rights action in July 2005. At that
05 time, plaintiff was incarcerated at the King County Regional Justice Center ("RJC") where he
06 was awaiting trial on various charges including assault, rape, malicious mischief, and attempted
07 escape. (*See* Dkt. 25, Declaration of John McHale, Attachment A at 1-3.) During the course of
08 his pretrial detention, plaintiff violated a pre-trial order which prohibited him from contacting
09 Jennifer Flowers, the woman who was the victim of many of the offenses with which he was
10 charged. (*See id.*) Plaintiff contacted Flowers both by telephone and by mail and he asked
11 her in those communications that she not come to court. (*See id.* at 2.) Following these
12 prohibited contacts, Flowers contacted police and recanted her allegations against plaintiff.
13 (*Id.*) When police subsequently learned from Flowers' mother that Flowers had received a
14 letter from plaintiff, Detective Belford obtained a warrant to search plaintiff's cell at the RJC
15 for evidence of violation of an order prohibiting contact and intimidation of a witness. (*See id.*
16 and Dkt. 6 at 7-10.)

17 During the search of plaintiff's cell, detectives found letters from Flowers. (Dkt. 25,
18 Declaration of John McHale, Attachment A at 2.) They also found a letter from another
19 inmate, Sadie Eggleston, in which Eggleston admitted to having been involved in a homicide.
20 (*Id.*) Detectives thereafter obtained a warrant to search Eggleston's cell. (*Id.*) That search
21 led to the discovery of several letters from Kirkham to Eggleston which were romantic in
22 nature. (*Id.*) Flowers became aware of these letters and thereafter confirmed to defendant

01 Belford and to the prosecutor that her prior allegations against plaintiff were true and she agreed
02 to testify against him at trial. (*Id.*) The case proceeded to trial and the jury convicted plaintiff
03 of 10 counts including multiple assaults against Flowers, rape, malicious mischief, attempted
04 escape, assault against a King County Sheriff's Deputy, and tampering with a witness. (*Id.*)

05 Plaintiff asserts in his complaint that detectives exceeded the scope of the warrant
06 obtained to search his cell when they took personal writing and poetry from his cell as well as
07 letters from his friend Sadie Eggleston, none of which were mentioned in the warrant. Plaintiff
08 further asserts that detectives used these illegally seized letters from Eggleston to obtain a
09 warrant to search Eggleston's cell. In that search, letters plaintiff had written to Eggleston,
10 letters which had nothing to do with plaintiff's criminal proceedings, were seized and turned
11 over to the King County Prosecutor's Office. The Prosecutor's Office, according to plaintiff,
12 then used these illegally seized letters to create a hostile witness in his criminal proceedings.
13 Plaintiff's assert that the detectives' illegal searches led to tampering with the key state's
14 witness, Jennifer Flowers, causing irreversible damage to his defense. Plaintiff maintains not
15 only that his Fourth Amendment rights were violated by the actions of defendants, but that his
16 rights to a fair trial and to equal protection were also violated.

17 DISCUSSION

18 Summary Judgment Standard

19 Summary judgment is appropriate when, viewing the evidence in the light most
20 favorable to the nonmoving party, there exists "no genuine issue as to any material fact" such
21 that "the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A
22 material fact is a fact relevant to the outcome of the pending action. *See Anderson v. Liberty*

01 *Lobby, Inc.*, 477 U.S. 242, 248 (1986). Genuine issues of material fact are those for which the
02 evidence is such that “a reasonable jury could return a verdict for the nonmoving party.” *Id.*

03 In response to a properly supported summary judgment motion, the nonmoving party
04 may not rest upon mere allegations or denials in the pleadings, but must set forth specific facts
05 demonstrating a genuine issue of fact for trial and produce evidence sufficient to establish the
06 existence of the elements essential to his case. *See* Fed. R. Civ. P. 56(e). A mere scintilla of
07 evidence is insufficient to create a factual dispute. *See Anderson*, 477 U.S. at 252.

08 Defendant argues in his motion for summary judgment that plaintiff’s claim that he was
09 subject to an illegal search and seizure, if true, would undermine the validity of plaintiff’s
10 criminal convictions and is therefore barred by the United States Supreme Court’s decision in
11 *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). In *Heck*, the United States Supreme Court
12 held that a § 1983 claim that calls into question the lawfulness of a plaintiff’s conviction or
13 confinement does not accrue “unless and until the conviction or sentence is reversed, expunged,
14 invalidated, or inquired by the grant of a writ of habeas corpus.” *Id.* at 489.

15 Plaintiff has not responded to defendant’s summary judgment motion. However, it
16 appears clear from the face of the complaint that the claim plaintiff intends to pursue in this civil
17 rights action is that defendant Belford, by his conduct, undermined the fairness of plaintiff’s
18 state criminal proceedings. A decision in plaintiff’s favor on such a claim would necessarily
19 call into question the validity of his convictions. There is no evidence in the record that
20 petitioner’s convictions have been reversed or invalidated in any way. Accordingly, this Court
21 concludes that plaintiff’s claims are barred by *Heck*.

22 ///

01 CONCLUSION

02 Based on the foregoing, the Court recommends that defendant's motion for summary
03 judgment be granted and that plaintiff's complaint, and this action, be dismissed without
04 prejudice. A proposed order accompanies this Report and Recommendation.

05 DATED this 6th day of September, 2009.

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08 Mary Alice Theiler
09 United States Magistrate Judge
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